STATE OF MICHIGAN

COURT OF APPEALS

STATE TREASURER, Plaintiff-Appellee,	UNPUBLISHED July 20, 2006
v	No. 260716 Muskegon Circuit Court
MATTHEW JOSEPH CREHAN, Defendant-Appellant.	LC No. 03-042421-CZ

Before: Talbot, P.J., and Owens and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from a final judgment of tax foreclosure against his real property. We affirm.

Defendant's failure to pay property taxes on his real property between 1999 and 2001 prompted plaintiff to initiate foreclosure proceedings against defendant. Defendant contested the petition on grounds that the statutes under which he was required to pay certain property taxes were invalid. The trial court disagreed and entered a judgment of foreclosure.

Defendant first argues that the City of Roosevelt Park violated several requirements of MCL 211.24e and, consequently, failed to properly notify the public of a 1993 resolution to increase the millage rate. Defendant maintains that, as a result, the millage rate increase was illegal, and he should not be required to pay the taxes on his property attributable to this rate increase. We review questions of law involving statutory interpretation and statutory construction de novo. *Michigan Muni Liability & Prop Pool v Muskegon Co Bd of Co Rd Comm'rs*, 235 Mich App 183, 189; 597 NW2d 187 (1999); *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995).

Defendant first argues that the city failed to publish the notice of the public hearing regarding the millage rate increase in a timely manner. MCL 211.24e(6) states that notice of the public hearing to discuss the proposed millage increase "shall be published not less than 6 days before the public hearing . . . ." Defendant argues that the city violated this provision because the notice of the public hearing was published on September 29, 1993, only five days before the October 4, 1993, hearing. Defendant additionally argues that the notice of the public hearing was improperly placed in the portion of the newspaper reserved for legal notices and classified advertisements. MCL 211.24e(6) states that the notice "shall not be placed in that portion of the newspaper reserved for legal notice and classified advertisements."

Assuming, as argued by defendant, that these two technical violations occurred, the notice of public hearing substantially complied with the statutory requirements of MCL 211.24e(6), and therefore, we do not conclude that the violations invalidate the millage increase. Our Supreme Court has held that a local government resolution is valid if the local governing body substantially complies with the requirements to notify the public of the proposed resolution. *Bay Co v Hand*, 257 Mich 262, 268; 241 NW 256 (1932). This Court has similarly ruled that a city's failure to comply with every provision of a local requirement to notify the public of an upcoming hearing does not invalidate enforcement of the resolution approved during the proceeding with respect to individual plaintiffs where they had actual notice of the proceeding, and there was substantial compliance with the mandates of the city charter. *Wait v City of Sturgis*, 2 Mich App 614, 620-621; 141 NW2d 364 (1966).

In this case, the City of Roosevelt Park substantially complied with the notice requirements of MCL 211.24e(6). The only errors were attributable to the form of the notice; specifically, the public notice was published in the wrong section of the newspaper one day later than was statutorily directed. Yet, defendant admitted that he was present at the October 4, 1993, meeting, and so any technical violations of the notice requirements of MCL 211.24e did not actually prejudice him. Both the *Bay County* and *Wait* Courts upheld the validity of the proceedings when the public was adequately informed of their substantive nature, even if certain procedural provisions of the notice requirements were not followed verbatim. Therefore, we must hold that the Roosevelt Park City Council substantially complied with the notice requirements of MCL 211.24e. Consequently, we uphold the 1993 millage rate increase, and defendant must pay property taxes attributable to this increase.

Defendant's remaining arguments surrounding compliance with the requirements of MCL 211.24e are also without merit. Contrary to his argument, the city council properly complied with the applicable portion of MCL 211.24e(6), requiring the city to include, in the notice for the public hearing, that it would announce the date and location of the planned final action on the resolution during the hearing. Furthermore, defendant provided no evidence to support his claim that the city council failed to send notice of the public hearing to all newspapers of general circulation in Roosevelt Park, as required by MCL 211.24e(9). Therefore, he has not established a violation of MCL 211.24e(9), which would entitle him to relief.

Additionally, MCL 211.24e(7) does not pertain to a city's final resolution to adopt a millage rate increase. MCL 211.24e(6) requires that the city council include, in the notice of the public hearing, the rate by which it proposes to increase property taxes. MCL 211.24e(7) requires the city council to determine the value of the rate of a proposed tax increase before holding the public hearing regarding whether the proposed rate increase should be passed. There is no evidence on the record before us showing that the city council did not establish the value of the tax rate increase by resolution before issuing the notice of the public hearing. And we note that the notice of the public hearing lists the specific rate by which the city council proposed to increase taxes. Therefore, defendant has not established that the city council violated MCL 211.24e(7).

Defendant next claims that the city council indicated in the notice of hearing that its purpose for increasing the millage rate was to maintain the current level of city services. Defendant argues that the city actually increased the millage rate to fund a new city hall. He notes that, at the October 4, 1993, meeting, the city council approved a resolution to proceed

with the design and construction of a new city hall after adopting the resolution to increase the millage rate. Therefore, he concludes that the city council must have intended to pass the millage rate to fund the new city hall. This argument is mere speculation on defendant's part. He provides no affirmative evidence indicating that the city council passed the resolution increasing the millage rate in order to fund a new city hall. Further, defendant provides no citation to authority to support his arguments that a city council must state its purpose for increasing a millage rate in the notice of public hearing or that it may not use the revenue received pursuant to an amendment for an alternate purpose. Because defendant has not presented any authority to support his position, we will not address the issue further. *Byrne v Schneider's Iron & Metal, Inc*, 190 Mich App 176, 183; 475 NW2d 854 (1991).

Finally, defendant argues, for the first time on appeal, that the 2000 amendment to the City of Roosevelt Park Property Maintenance Code, § 35.057, is invalid because the city failed to properly follow the publication requirements found in MCL 89.6 and the City of Roosevelt Park Charter after adopting the amendment. Defendant claims that he is not, therefore, required to pay any "special assessments" included in his property taxes pursuant to this amendment. Because this issue was not presented before the trial court, it is not properly preserved for appeal. Regardless, because the question presented is one of law, we will briefly address defendant's legal argument. *Tingley v Kortz*, 262 Mich App 583, 588; 688 NW2d 291 (2004); *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 533 n 7; 672 NW2d 181 (2003). We review questions of law de novo. *Michigan Muni Liability & Prop Pool*, *supra* at 189; *Haworth*, *supra* at 227.

Defendant argues that the 2000 amendment is not legally valid because the city council published notice of the amendment two weeks after its approval. MCL 89.6 requires that an amendment passed by a city council be published within one week of approval. Although the city council did not publish the ordinance until two weeks after its passage, the city council's failure to follow the requirements of MCL 89.6 is insufficient to find the amendment invalid for lack of publication.

Our Supreme Court has long held that publication of an ordinance is not essential to its validity if the relevant city charter does not include this requirement. *North Muskegon v Miller*, 249 Mich 52, 61; 227 NW 743 (1929); *Vernakes v South Haven*, 186 Mich 595; 152 NW 919 (1915). Our Supreme Court reasoned that, when an ordinance has been lawfully adopted, it cannot be defeated by the omission of a ministerial duty, because this omission would act as a practical veto not conferred or contemplated by the charter. *North Muskegon, supra*, citing *Stevenson v Bay City*, 26 Mich 44 (1872). The Supreme Court's rationale may be applied to the present case. Neither MCL 89.6 nor the Roosevelt Park City Charter, § 4.6, requires publication of an amendment as a prerequisite for validation. Therefore, the city council's failure to publish the amendment within one week of adoption, as required by MCL 89.6, does not render the amendment invalid. The amendment was published as required by § 4.6 of the city charter. Consequently, defendant's argument is without merit.

Affirmed.

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Christopher M. Murray